

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.745 OF 2021

Shivaji Baburao Bhendekar

... Petitioner

Vs.

1. State of Maharashtra

2. The Superintendent of Jail,
Yerwada Open District Prison, Pune

... Respondents

Mr.Aniket Vagal for the Petitioner

Ms.Sangeeta Shinde, APP, for Respondent – State

**CORAM : S. S. SHINDE &
MANISH PITALE, JJ.**

**JUDGEMENT RESERVED ON : APRIL 8, 2021.
JUDGEMENT PRONOUNCED ON: APRIL 20, 2021.**

JUDGMENT [PER S. S. SHINDE, J.]:

Rule. Rule made returnable forthwith and heard with the consent of the counsel appearing for the parties.

2. The Petitioner has filed the present petition for the following substantial reliefs:

a) Order of Respondent No. 2 passed on 18.12.2020, may kindly be quashed and set aside.

b) The Petitioner may kindly be released on Emergency Parole for the Period of 45 days on any terms and condition as this Hon'ble Court may deem fit and proper.

3. The Petitioner herein (Convict No.C-853), is convicted for the offence punishable under section 302 of Indian Penal Code for life imprisonment and fine of Rs.6,500/-, in Sessions Case No.169 of 2014 on 23.3.2015 by the Sessions Court at Khed Rajgurunagar, Pune.

4. Learned counsel appearing for the Petitioner submits that the petitioner has undergone more than 8 years of imprisonment and he is lodged in the open prison. It is submitted that the application of the petitioner to release him on emergency (Covid-19) parole was rejected on the ground that the petitioner was never released on parole/furlough, till date. Therefore, the learned counsel appearing for the Petitioner submits that merely because the Petitioner was not released earlier is no ground to reject his application for emergency (Covid-19) parole if he fulfills the eligible criteria laid down in Prisons (Bombay Furlough and Parole) Rules, 1959.

5. Learned APP appearing for Respondent-State and its officials submits that the prayer of the petitioner to release him on emergency

(Covid-19) parole has rightly been turned down, relying upon the notification dated 8th May 2020 issued by the Government of Maharashtra, Home Department. It is submitted that the inmates are less in number as compared to the capacity of the prison. Utmost care is being taken in the prison by the officers and employees working in the prison, by examining the convicts by thermal scanning and RT-PCR tests. At present, there are no convicts who are tested positive/ Covid-19 affected in the prison. Therefore, learned APP submits that the prayer of the petitioner to release him on emergency (Covid-19) parole cannot be favorably considered.

6. We have given careful consideration to the submissions of learned counsel appearing for the Petitioner and learned APP appearing for the Respondent – State. With the able assistance of learned counsel appearing for the Petitioner and learned APP, we have perused pleadings and grounds in the petition, annexures thereto, impugned order/letter of understanding and also report received from the Superintendent of Yerwada Open Prison, Class-I, Pune-6. Upon careful perusal of the said report received from the prison authority, it appears that proper care is being taken of the convicts in the prison so as to avoid possibility of contracting Covid-19 virus. However, in the impugned order/letter of understanding, the

reason given is that the Petitioner herein was not released at any time on furlough or parole, till date. Another reason given is that if the inmate who is convicted for economical offences or under Special Act is not eligible for emergency (Covid-19) parole.

7. In our opinion, merely because the petitioner was not released earlier cannot be a ground for rejecting the application of the petitioner for emergency parole. This Court in Criminal Writ Petition-ASDB-LD-VC No. 65 of 2020 (Milind Ashok Patil & Ors. Vs. State of Maharashtra & Ors.) had occasion to consider a similar issue and a view is taken in the said case that merely because the petitioner was not released once in the past on parole/furlough cannot be a ground for rejecting the application for emergency parole.

8. In that view of the matter, the writ petition is partly allowed. The impugned order dated 18.12.2020 passed by Respondent No. 2, is quashed and set aside. The petitioner is granted liberty to apply afresh for grant of emergency Covid-19 parole within one week from today. Upon filing such an application, the respondent authority shall decide the same on its own merits, as expeditiously as possible, however, within three weeks from the date of filing of the application in accordance with the Prisons (Bombay Furlough and Parole) Rules,

1959, and keeping in view the factors like the extent of spread of Covid-19 virus and conditions in jail.

9. Rule is partly made absolute to above extent. The writ petition stands disposed of accordingly.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)